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723-120—64

In the Supreme Court of the United States

OCTOBER TERM, 1963

No. 737

J. J. (JAKE) HARDAWAY AND KATIE MAE HEIDELBERG, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

OPINION BELOW

The district court wrote no opinion. The opinion of the court of appeals (Pet. 1a–2a) is reported at 321 F. 2d 89.

JURISDICTION

The judgment of the court of appeals was entered on August 8, 1963. (Pet. 1a–2a.) Petition for rehearing was denied on December 9, 1963. (Pet. 3a.) The petition for certiorari was filed in this Court on January 8, 1964. The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254(1).

QUESTION PRESENTED

Whether the district court, during petitioners' trial for conspiracy to defraud the United States in rela-

tion to social security claims, committed reversible error in its rulings on evidence or in its instructions to the jury.

STATUTE INVOLVED

18 U.S.C.:

> Sec. 286. *Conspiracy to defraud the government with respect to claims.*
>
> Whoever enters into any agreement, combination, or conspiracy to defraud the United States, or any department or agency thereof, by obtaining or aiding to obtain the payment or allowance of any false, fictitious or fraudulent claim, shall be fined not more than $10,000 or imprisoned not more than 10 years, or both.

STATEMENT

Petitioners, who are brother and sister, were jointly indicted for conspiring together and with other named persons (who were not indicted) to defraud the United States by assisting such persons to file false and fraudulent claims to social security benefits in violation of 18 U.S.C., Section 286. (R. 2–5.) A jury trial resulted in a verdict of guilty against both petitioners, and each was fined $1,750 and given a suspended sentence of three years. (R. 514, 523–524, 539–543.) On appeal, the Fifth Circuit affirmed the judgment, noting in its *per curiam* opinion (Pet. 2a):

> After a careful review of the record and briefs, we hold that the evidence was sufficient to support the verdict. We find no reversible error in any of the trial judge's rulings. The appellants received a fair trial.

Petitioners do not argue that the evidence was insufficient (although they so contended in the court of appeals), but urge review on the basis of alleged errors in the conduct of the trial. Since the evidence, where pertinent, is set forth in the Argument, only the briefest outline will be given here.

The evidence showed that petitioners lived on adjoining farms in Enterprise, Mississippi. (R. 377, 437.) When self-employed farmers became eligible for social security in 1954, petitioner Heidelberg learned how to fill out the necessary papers and assisted many people in the preparation of federal income tax returns. (R. 377, 393, 407.) Her brother, petitioner Hardaway, obtained several tax return forms and helped in filing them. The returns all bore the name of petitioner Heidelberg as the person assisting in their preparation. (R. 458–460.) During 1957 several of the farmers involved filed delinquent returns for 1955 and 1956 together with an application for old-age benefits—in each instance, all three documents were filed simultaneously. (Govt. Exs. 1–27.) Income was intentionally overstated, and taxes overpaid, in the returns in order to provide a basis for claiming greater amounts in old-age benefits.[1]

Several claimants appeared as witnesses. Each testified that petitioner Hardaway approached him

[1] Except for ceiling limitations not applicable to these claims, the size of earnings determines the amount of old-age benefits. (R. 26–27; see Sections 202(a) and 215 of the Social Security Act, 42 U.S.C. 402(a), 415.) This relationship is explained in publications (Deft. Exs. 3 and 6) with which petitioner Heidelberg admitted thorough familiarity during the period involved. (R. 394, 398.)

and broached the subject of social security (R. 130, 173, 302, 452), and that he paid Hardaway for his assistance (R. 176, 243, 453). Petitioner Heidelberg testified that she prepared all the returns on information given to her by the taxpayers, and that she was unaware that her brother had anything to do with the matter. (R. 376–377, 384–385, 408, 421–422, 434–435.) Each of the taxpayers who testified, however, stated that he gave this information to petitioner Hardaway, and had no dealings with Mrs. Heidelberg. (R. 151, 224, 241, 249, 311, 450–454.) Some taxpayers admitted that they did not have the earnings they reported. (R. 125, 136, 175–184, 189–212, 241–242, 452–455.) One claimant taxpayer was a woman about 75 years old at the time of trial (R. 133); another was a woman of 82 (R. 249). When the social security office demanded proof of earnings, petitioner Hardaway instructed one claimant taxpayer what figures to write down in her record book, and he deliberately added to the actual earnings (i.e., to the total earned by the farm, regardless of whether part of the earnings belonged to her as the farmer's wife), saying that otherwise, "Well, she can't draw so much." (R. 178–179, 182.) He then told the woman and her husband to keep the book as proof if trouble arose with the social security office. (R. 183.) This claimant received social security benefits in the aggregate sum of $945.20 before the payments were stopped (R. 72); subsequently she repaid the full amount (R. 115–116). Other claimants similarly received large benefits which were later

terminated after investigation, although restitution has not been accomplished. (R. 72–85.)

ARGUMENT

The court of appeals correctly held that the evidence was sufficient to support the verdict and that petitioners received a fair trial, free from error. There is no occasion for further review by this Court.

1. Petitioners assert (Pet. 4, 6–8) that they were prejudiced when various tax returns and social security applications were allowed to go to the jury, together with the indictment, since some of the documents, though identified by the indictment as those of alleged co-conspirators, were not shown to have been false. When the documents were introduced, counsel's only objection was that the death of the claimant made them inadmissible, an untenable objection which the court properly overruled. (R. 41–42, 47.) The record reveals no subsequent request by counsel that the documents be withdrawn or stricken, and petitioners' motion for acquittal n.o.v. does not allude to the matter. (R. 512, 524–526.) Clearly, any documents as to which there was no proof of falsity were innocuous. And the court carefully instructed the jury that neither the fact of indictment nor any of its content could be considered as evidence. (R. 480, 490–491.) There was no error. See *Haupt* v. *United States*, 330 U.S. 631, 643, rehearing denied, 331 U.S. 864; *Little* v. *United States*, 73 F. 2d 861, 864 (C.A. 10th); *C.I.T. Corp.* v. *United States*, 150 F. 2d 85, 91 (C.A. 9th).

2. Petitioners assert (Pet. 8–10) prejudicial error in the following instruction to the jury (R. 484–485):

> I next charge you that Maggie Cotton was not entitled in my opinion as a matter of law to social security benefits for which claims were filed through the United States Government agency therefor, and it is the opinion of this Court that the amounts of such claims were willfully and intentionally increased in excessive amounts not supported by the actual earned income of such party, but that factual question is one committed entirely to the jury, and the Court tells you that the jury itself, and not the Court, is the sole judge of the credibility of every witness and the weight of the evidence and the testimony of every witness which appeared before you here, and you may make your own determination in reaching your verdict as to whether or not these claims which were filed by these various persons were false and fraudulent in fact.

Petitioners' only objection to this instruction at the trial was that it was a comment on the weight of the evidence (R. 506), and no other basis for objection was asserted in their brief in the court of appeals. Now they contend that the instruction was somehow erroneous as a matter of substantive social security law.[2] Both contentions are without merit.

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[2] Petitioners' failure to present this contention in the courts below is, in the absence of "exceptional circumstances", fatal to its initial presentation here. E.g., *Lawn* v. *United States*, 355 U.S. 339, 362, fn. 16; *Husty* v. *United States*, 282 U.S. 694, 701–702.

The first objection is without merit because a federal judge "may express his opinion upon the facts, provided he makes it clear to the jury that all matters of fact are submitted to their determination." *Quercia* v. *United States*, 289 U.S. 466, 469. See also, *Bute* v. *Illinois*, 333 U.S. 640, 650, fn. 4; *Allis* v. *United States*, 155 U.S. 117, 123; *Simmons* v. *United States*, 142 U.S. 148, 155. Here, the judge immediately told the jury that they were the "sole judge" of the weight of the evidence, and said, "* * * you may make your own determination * * * as to whether or not these claims * * * were false and fraudulent in fact." (R. 485.) Subsequently, after counsel stated his exception (R. 506), the judge reiterated that his comment was only his opinion, and told the jury that the question was for them to decide. (R. 506).

Petitioners' argument based upon the option granted to farmers by Title 42, U.S.C., Section 411(a)(7)(B)(i) and (ii), is far from clear but apparently it is that a false exaggeration of gross income would not necessarily result in a false claim for old age benefits, because benefits are based on net income or earnings and the option permits the reporting of an arbitrary fraction (two-thirds) of gross income as being net income. This option, however, was entirely irrelevant in this case, because the acknowledged falsity concerned the amount of gross income. Whether net earnings were stated as gross income (exaggerated) less expenses, or as two thirds of gross income (exaggerated), the result

would be an exaggeration of net earnings, and consequently an exaggerated claim to old-age benefits. To state the matter concretely, Maggie, on her 1956 tax return (Govt. Ex. 3), reported gross income (falsely exaggerated, according to the testimony already mentioned) of $1,495, expenses of $290, and resulting net income of $1,205, and on her application for benefits (Govt. Ex. 1) she reported net income of $1,205. If in fact that gross income of $1,495 was a false exaggeration, then as a matter of law she was not entitled to the claimed amount of old age benefits, and the judge was entirely correct in so informing the jury. The option now alluded to would not have cured the falsity of her claim, because (if she had elected to use it in the space provided on her 1956 tax return, Govt. Ex. 3) her net earnings then would have been deemed to be two-thirds of $1,495, *i.e.*, $996.66. Through non-exercise of the option, her asserted claim to benefits was thus greater than it would have been, but whether she did or did not exercise the option (she did not), the false exaggeration of gross income inevitably entailed a consequent falsely exaggerated claim for old age benefits. It is thus entirely clear that the crux of the matter was whether gross income was falsely exaggerated. If it was, then as a matter of law Maggie was not entitled to the benefits she claimed, and the jury was entitled to know that such was the consequence, in this case, of any exaggeration of Maggie's gross income. The instruction so informed them, and there was no error.

3. Petitioners' contention (Pet. 10) that the trial court's charge was one-sided and set forth the requisites of guilt without sufficient explanation of innocence or good faith is without merit, as a study of the entire charge (R. 479–509) shows. The court in fact instructed the jury correctly and fully as to willfulness, specific intent, bad purpose, and intent to defraud the Government. (R. 485–488.) The court also instructed that "an honest mistake in applying the law is not of itself a fraud" (R. 490), that every reasonable doubt as to petitioners' intent must be resolved in their favor (R. 490), that evidence of a fraudulent intent on the part of other persons could not be considered as evidence against petitioners (R. 491), and that the intent meant by the indictment was "the actual, knowing, cheating scheme to cheat the government, intended by a defendant to do just that" (R. 491).

4. Petitioners' contention (Pet. 10–11) that the instructions as to reasonable doubt were prejudicially erroneous is without merit. They single out one sentence stating that proof beyond a reasonable doubt is established "if the evidence is such as you would be willing to rely and act upon in the most important of your own affairs." (R. 494.) This Court, however held that a similar instruction was not misleading in *Holland* v. *United States*, 348 U.S. 121, 140, and in *Miles* v. *United States*, 103 U.S. 304, 312. Moreover, even if such an instruction, standing alone, were incorrect, here the charge as a whole clearly and ade-

quately stated the correct legal rule, that a reasonable doubt exists if "the jurors do not feel convinced to a moral certainty that the defendant is guilty of the charge." (R. 495.)

Petitioners also urge that the court should have instructed the jury not to convict on evidence which is "entirely consistent with innocence." (Pet. 11.) In substance, however, the court did so charge, admonishing the jury not to accept "as proof or evidence of guilt any hypothesis which you know to be consistent with innocence." (R. 490.) Counsel took no exception to that charge. (R. 504–511.)

5. Petitioners contend (Pet. 11–12) that the trial court erred in charging the jury (R. 492–493) that, in order for a self-employed farmer to qualify for Social-Security benefits, it must appear that his participation in the farm production was "material". Petitioners objected at the trial to this part of the charge on the ground that it would limit the benefits of the Act to those who did manual labor. The trial judge then modified his charge by telling the jury that "material participation" meant "substantial performance or service in connection with the operation," but petitioners still objected. (R. 509–511.)

Petitioners make no effort to explain how they were harmed by this instruction, nor is it apparent how they could have been. Almost all of the claimants involved actually did the manual farm labor themselves. The only one who performed no manual work was an 82 year old woman who lived with her son. (R. 237–239, 249.) Furthermore, just prior to the

disputed passage, the trial court had, at petitioners' own request, instructed the jury, "you may not consider as evidence of defrauding the fact that certain persons claimed income from farm operations without actually doing the physical farming itself." R. 492.)

6. Equally groundless is petitioners' objection (Pet. 12) to the following portion of the court's charge (R. 500):

> It is reasonable to infer that a person ordinarily intends the natural and probable consequences of facts knowingly done or knowingly omitted.

This Court has recently denied petitions for certiorari in two cases seeking review of rulings as to this same instruction. *Sherwin* v. *United States*, No. 519, certiorari denied, January 6, 1964; and *United States* v. *Mann*, No. 662, certiorari denied, January 13, 1964. A review of the court's entire charge shows as has already been pointed out (*supra*, p. 9), that the jury was thoroughly and correctly instructed as to knowledge, intent, and wilfulness.[3]

[3] Petitioners add (Pet. 16–17), as another reason for review, the fact that the trial judge referred to them as "those colored people" (R. 15). They omit to note that the court went on to ask, on *voir dire*, whether any juror would "have any prejudice against either of those defendants or both of them because they are colored people charged by the government with the commission of a crime?" (R. 15.) In its charge, the court instructed the jurors to perform their duty "without bias or prejudice as to any party." (R. 480.). Clearly this alleged ground for review is without merit. It was not mentioned in petitioners' brief in the court below.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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